IN THE COURT OF APPEALS OF IOWA

No. 0-490 / 09-0961
Filed November 24, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES ALAN CHRISTENSEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury[1] County, Arthur E. Gamble, Judge.

Defendant appeals his conviction for second-degree sexual abuse by aiding or abetting another. **AFFIRMED.**

Susan R. Stockdale, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Andrew B. Prosser, and Becky Goettsch, Assistant Attorneys General, and Patrick Jennings, County Attorney, for appellee.

Heard by Vaitheswaran, P.J., Eisenhauer and Danilson, JJ. Tabor, J., takes no part.

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[1] Upon order of change of venue from Union County.

EISENHAUER, J.

James Christensen appeals his conviction for second-degree sexual abuse by aiding or abetting another, arguing: (1) the evidence is insufficient to support his conviction; (2) the verdict is contrary to the weight of the evidence; (3) the court erred in excluding evidence; and (4) the court erred in not granting a mistrial. We affirm.

I. Insufficient Evidence.

Christensen, the chief of police, and Sickels, the assistant chief of police, were co-defendants at trial. A jury found Sickels guilty of second-degree sexual abuse of L.S. and found Christensen guilty of second-degree sexual abuse of L.S. by aiding and abetting. Christensen argues the State's evidence was insufficient to support his conviction. Under Iowa law, one who aids and abets a crime is charged, tried and punished as a principal. Iowa Code § 703.1 (2007). The jury was instructed:

> [T]he State must prove all of the following elements of Sexual Abuse in the Second Degree:
>
> 1. On or about the 18th day of April, 2008, John Sickels performed a sex act with [L.S.];
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> 2. John Sickels performed the sex act by force or against the will of [L.S.];
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> 3. During the commission of sexual abuse, James Christensen aided and abetted John Sickels.

We review sufficiency of the evidence issues for correction of errors at law. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005). The jury's verdict is binding upon a reviewing court unless there is an absence of substantial evidence in the record to sustain it. *Fenske v. State*, 592 N.W.2d 333, 343 (Iowa 1999). The jury is "free to reject certain evidence and credit other evidence."

State v. Nitcher, 720 N.W.2d 547, 559 (Iowa 2006). "Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt." *State v. Rohm,* 609 N.W.2d 504, 509 (Iowa 2000). "[W]e view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record." *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006).

A. The Evidence. Starting in July 2006, L.S. worked as a bartender/waitress at a country club. The club manager testified L.S. was dependable, hard working, and "kind of like my right hand." In April 2008, L.S. was working the Thursday "men's night" shift from 6:00 p.m. until close. By 1:30 a.m., Sickels, Christensen, and L.S. were the only people remaining at the club. Sickels and Christensen had been drinking throughout the evening and L.S. had a drink as her work shift was winding down.

L.S. and Sickels both testified that while Christensen was present, Sickels asked her to perform oral sex on both men and she said no. Christensen testified he does not remember Sickels asking for a sex act for both men. L.S. testified Sickels and Christensen moved behind the bar, cornered her, and Sickels made the same request. L.S. again said no. L.S. testified Sickels left the bar while Christensen kept her behind the bar. In contrast, Sickels and Christensen testified Christensen left the bar and then returned.

L.S. testified when Sickels returned to the room he walked behind her and both men began to touch her. L.S. tried to spin around and get away but Sickels

and Christensen surrounded her with their arms and moved with her. As Sickels began having sex with L.S., they were all behind the bar and Christensen was beside L.S. with one arm on her shoulder and one arm on the bar. As the assault progressed, Christensen moved to sit in a bar stool directly across from L.S. and stroked her hair, held her hand, and "shushed her." During the assault L.S. verbally protested and cried.

As the two men were leaving, Christensen pointed his finger at L.S.'s face, looked her "straight in the eye and said, 'Nothing happened.'" L.S. interpreted this as a threat: "nothing happened, and if you say something, something, you know, bad will happen. So these are the two chief officers and I just was freaked out . . . ." L.S. testified:

> Q. Did you consider running out the front door to get help? A. No. There's no help out there. . . . I was really, really scared. There's nowhere to go other than out in the parking lot where they are. . . .
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> Q. Did you consider calling the police? A. No.
>
> Q. Why not? A. Because the police just left.
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> . . . .
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> Q. Did you consider calling [your boyfriend] at this point? A. No.
>
> Q. Why not? A. Because I wanted to get out of there and go home. . . . I was just really, really in a state of—I don't know, I was in shock or something. I didn't know what to do. I didn't even finish vacuuming.
>
> . . . .
>
> Q. And you eventually did just go home? A. Well, I tried to vacuum and I know I sat down after turning off the vacuum—I kind of sat on the floor next to it and cried for I don't know how long. And then I didn't—I don't even think I wrapped up the cord on the vacuum cleaner. I put it where it goes and I went home.

Sickels testified after the men left the club around 2:00 a.m., they sat and talked while parked outside of Christensen's house. Sickels stated they talked

about work-related issues and there was no discussion about events at the country club.

Lesha Clark, the club manager, testified she arrived at the club the next morning and was surprised to find the club in disarray. Suzie Stofferahn, the club bookkeeper/board member, arrived ten minutes later and also observed the disarray. Some doors were unlocked, chairs were not pushed underneath tables, popcorn was left on the floor, tables were not wiped off, and a check was left "beside the cash register." Clark described the condition of the bar area:

> There [were] items set on the edge of the bar that were knocked off into the sink which sits behind the bar. The straws, the swords, the toothpicks, they sit in containers on top of the bar and they were strung all over and dropped in the sink behind the bar . . . .

Because Clark was worried about L.S.'s safety, she tried to call L.S. at her school, but she wasn't there. Clark testified L.S.'s boyfriend had subjected her to domestic abuse in the past. Clark wanted to "know if something took place . . . . I didn't have any idea what had happened." Next, Clark called numerous club members and through a series of phone calls discovered Sickels and Christensen had been the last customers. Clark called the police station and eventually talked to Christensen. Christensen confirmed he and Sickels had been at the bar and stated they left together around 1:00 a.m. Over an hour later, Christensen called Clark and stated he had talked to Sickels and he was calling to correct the time they left, it was closer to around 2:00 a.m.

L.S. was not scheduled to work again until the next Thursday evening. Clark asked L.S. to meet her Thursday morning at the club and stated:

> Q. When she comes to the club, what happens? A. She came into the club and sat down . . . I said, I believe that something happened out here last Thursday night and I need to know. I need to know. I need to be aware if something happened. . . .
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> . . . .
>
> Q. Okay. When you're saying this to [L.S.] . . . what was her demeanor like? A. She was upset.
>
> Q. Upset how? A. She was crying. She was shaking. She was just distraught . . . .

Based on L.S.'s statements, Clark called Stofferahn to come to the club and join the discussion. At trial, Stofferahn also testified L.S. was upset during the Thursday morning meeting. After the meeting, Stofferahn told the DCI that L.S. stated Christensen left the bar for a few moments, not Sickels. Clark urged L.S. to contact the authorities and L.S. stated she would think about it. L.S. explained:

> I was scheduled to work that night after [the Clark/Stofferahn] meeting, yes. [Clark] offered for me not to work, and I kind of was trying to get that get-back-on-the-horse attitude, so I said, "I will work, you know. You will be with me the whole night, right?" And she agreed no one would ever work there alone again until close. So I worked and [Clark] stayed with me until close.

L.S. also worked Friday night and Saturday night. After working Saturday, L.S. requested and was granted a leave of absence: "I was having a difficult time being there. I gave it three times and it was not getting any easier. I was feeling really anxious when I was there . . . ."

L.S.'s boyfriend discovered her crying in the bathroom after her last Saturday at work and she eventually told him about the sexual abuse. Her boyfriend did online research for resources and L.S. first talked to the Rural Iowa Crisis Center and then to the DCI.

The DCI arranged for L.S. to conduct recorded conversations with Christensen. Meanwhile Christensen and Sickels had meetings with Tom Hartsock, the retired chief of police and their former boss. Hartsock testified: "I recommended to both James Christensen and Johnny Sickels that they should wear a recording device when meeting with [L.S.]." Christensen also recorded the conversations. Christensen testified:

> Q. . . . [D]o you recall [L.S.] formally making an allegation of sexual assault. A. She makes a statement similar to that, yes.
> Q. . . . [W]ell, what did she want you to do? Did she want you to investigate further? Did she want John Sickels arrested? What . . . did she tell you that she wanted done? A. I don't remember the order of events of which requests were made. She did state that she wanted to file a report or have it investigated. I stated I would look into it, but, again, advised her, however, I was there. It did not happen.

Christensen did not contact any authorities about L.S.'s desire to report a sexual assault by his assistant police chief, Sickels. Christensen testified:

> Q. And, you know, I guess the bottom line is this: Why didn't you call the sheriff? Why didn't you call the county attorney or, I suppose the DCI? Why didn't you do that? A. Because it didn't happen.

A few days later, the DCI contacted Christensen. Christensen and Sickels agreed to an interview with the DCI and also met again with the retired police chief before the interview. Christensen and Sickels drove into Des Moines together. The DCI interviewed Sickels and Christensen in different rooms. At first, Sickels denied he had sex with L.S. and Christensen told the DCI nobody touched her. Christensen stated he saw Sickels and L.S. behind the bar, but "I never saw any sex act." Sickels had investigated sexual assault-type crimes and asked the DCI about DNA evidence. Sickels testified at trial:

> Q. And you were asking about DNA because you wanted to know exactly what evidence the DCI had, correct? A. No, I would say no to that.
>
> Q. Then why are you asking about DNA? A. I don't know. I wanted to give myself some time to concentrate, to breathe, and to figure out exactly what I was going to do.

Next, Sickels and Christensen had a private discussion in the parking lot. When they returned to their separate interview rooms after the discussion, Sickels admitted to consensual sexual intercourse with L.S. that started while Christensen left the bar to use the restroom. At trial, Sickels testified L.S. became more flirtatious after the other members left and *silently* agreed to have sex with him when Christensen left the room.

After the parking lot discussion, Christensen also changed his story. Christensen told the DCI Sickels told him for the first time that Sickels had sex with L.S. Christensen also admitted actions and statements consistent with L.S.'s claims, including: Christensen held her hand, what she said, and what Christensen said as he left.

Christensen's trial testimony contradicted his DCI interview statements: he denied holding L.S.'s hand, hearing her protest statements, or saying anything as he left. Christensen explained this change in testimony by stating his statements to the DCI were hypothetical in the context of "is it possible" and anything is possible.

On cross-examination, the DCI tape was played for the jury. After the tape was played, Christensen testified:

> Q. Okay. Did [Sickels] tell you all those details about what you did? You walked in, you held her hand, she said, This isn't right. On the way out the door, you said, Don't worry, this didn't

> happen? Did [Sickels] tell you that in the parking lot? A. He did not tell me that, no.
>
> Q. So where did you come up with that? A. I believe it was in the discussion with the [DCI agent].
>
> Q. But in this context, [the DCI agent] is not saying is it possible, right? You're talking. Those are your words. A. Yes.
>
> Q. So once again, how do you explain that you're looking right at the [DCI agent] on tape saying that those are the things that you saw, heard, and did, and yet today you're denying that you saw, heard, or did any of those things? A. At some point it was discussed already.
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> . . . .
>
> Q. . . . Are you suggesting that [the DCI agent] put all that in your mouth or in your head? A. No.
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> . . . .
>
> Q. Where did all this information come from that you're sitting here saying to him? A. It came from my head.
>
> Q. Okay. So, again, I'm back to the question. Did you hear or see any of those things that you just discussed on this interview? A. Yes, I did.
>
> Q. Okay. So did you see Sickels having sex? A. Yes.
>
> Q. And you did come into the room and see that? A. I did not see sex.
>
> Q. You saw movement which you believed to be sex? A. Yes.

B. Sufficiency of the Evidence. Christensen argues the evidence is insubstantial because the only evidence implicating him is the testimony of L.S. and the "other evidence either contradicts [L.S.'s] testimony or shows she had a motive to either lie or misremember what happened." Christensen ignores the testimony from both the club manager and the club bookkeeper describing the disarray in the bar area the morning after the assault. His argument also completely ignores both his own statements to the DCI consistent with L.S.'s description of the assault and the confirming statements of Sickels. We note the credibility of witnesses is for the factfinder to decide except for those rare circumstances where the testimony is absurd, impossible, or self-contradictory.

State v. Kostman, 585 N.W.2d 209, 211 (Iowa 1998). None of those factors apply to L.S.'s testimony. In contrast, both Christensen and Sickels lied to the DCI and then change their stories after they talked privately in the DCI parking lot. When viewing the evidence in the light most favorable to the State, we conclude a rational trier of fact could have found Christensen guilty. Because substantial evidence supports the jury's determination, we affirm the verdict.

II. Weight of the Evidence.

Christensen next argues the court erred in denying his motion for a new trial because "it is clear that the verdict is contrary to the weight of the evidence." We review for an abuse of discretion. *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). After reviewing the record, we find no abuse of discretion and adopt the trial court's resolution of this issue:

> The verdict in this case is not contrary to the weight of the evidence. . . . As previously indicated, [L.S.'s] testimony was consistent and credible. Her testimony was corroborated by the testimony of the Club manager who found the bar in disarray on the morning after the incident. Further, the admissions of the defendants support many of the salient points of the [victim's] testimony. The testimony of the defendants was inconsistent and generally not credible on the issue of consent.
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> . . . .
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> The credible evidence indicates Christensen approved and encouraged Sickels's activity and actively participated in the crime prior to or at the time of its commission.
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> This is not a case where the evidence preponderates heavily against the verdict. A miscarriage of justice has not resulted. The verdict is not contrary to the weight of the evidence. The Defendant's motion for new trial based on the weight-of-the-evidence standard should be denied.

III. Excluding Evidence.

Christensen claims the court erred when it ruled testimony concerning L.S.'s allegedly kissing another club member several months prior to the sexual assault is inadmissible. We review "standard claims of error in admission of evidence for an abuse of discretion." *State v. Stone*, 764 N.W.2d 545, 548 (Iowa 2009).

Before trial the State made a motion in limine to exclude the testimony. The court granted the State's motion, stating: "The [witnesses] allege [L.S.] engaged in inappropriate behavior of a sexual nature. The Court believes the type of behavior alleged is precisely the type of evidence which [Iowa] Rule [of Evidence] 5.412 is intended to keep out of trial." After the defendants made an offer of proof at trial, the court affirmed its prior ruling.

Rule 5.412 is "the rape shield law" and it "prohibits introduction of reputation or opinion evidence of [a victim's] 'past sexual behavior' and substantially limits admissibility of evidence of specific instances of a complainant's past sexual behavior." *State v. Alberts*, 722 N.W.2d 402, 408 (Iowa 2006). Its purpose "is to protect the victim's privacy, encourage the reporting and prosecution of sex offenses, and prevent parties from delving into distractive, irrelevant matters." *Id*. at 409.

We find no abuse of discretion. Evidence L.S. may have kissed one man several months prior to the sexual assault is legally irrelevant to the issue of consent at the time of the assault. *See State v. Ball*, 262 N.W.2d 278, 280 (Iowa

1978) (stating "evidence of the victim's prior sexual conduct with a third party had no bearing on the issue of her consent").

IV. Mistrial for Improper Argument.

Christensen seeks a new trial arguing the prosecutor's improper rebuttal argument deprived him of a fair trial. Christensen notes the prosecutor began the rebuttal of her closing argument with a slide stating: "Not guilty/Nothing[2] requires you to believe defendants and not believe [L.S.]." Before the rebuttal argument began, defense counsel objected the slide misstated the law. The court immediately sustained the objection. The court stated "the slide was taken down within a matter of seconds."

The prosecutor discussed the concept of reasonable doubt and addressed the "girl gone wild defense." During this discussion, the prosecutor argued:

> We have also heard some talk about, well, she was in the bag. Let's talk about that misconception. The defendants want you to believe that somehow women have a couple cocktails and turn into the girl gone wild. Women have a couple cocktails and they're ready to have promiscuous sudden two-minute sex. . . . Use your common sense. Women do not just get half in the bag and then that's just okay. It's certainly not reasonable doubt. . . .
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> Plus whether she's intoxicated, not intoxicated, I mean Mr. Sickels wants us to believe that, she was drunker than me. She was really drunk. If that's the case, he's a police officer; he should have known she couldn't consent. Which is it? You can't have it both ways.

Sickels objected the prosecutor misstated the law. The court held a hearing outside the presence of the jury and sustained the objection, stating: "[T]elling the jury that as a peace officer he should have known she couldn't

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[2] The record at trial states "nothing" while the district court's ruling states "not guilty." We need not resolve the disparity because we reach the same result under either version.

consent is just an inaccurate statement." When the jury returned, the court stated:

> The objection is sustained. Under the crime charged by the State in the Trial Informations, the level of [L.S.'s] intoxication, if any, would not preclude giving consent. You may consider all the surrounding circumstances—all of the circumstances surrounding the defendant's act in deciding whether the act was done by force or against the will of [L.S.].

Next the prosecutor discussed: (1) the challenges to L.S.'s credibility based on a jealous boyfriend and prior domestic abuse; (2) the "I'll get fired [for drinking on the job] defense"; (3) an ambiguous time line is not reasonable doubt; and (4) the "against the will" element and the defendants' argument L.S. did not run, did not go to the hospital, did not call the police. The prosecutor argued:

> Now, if you are being surrounded by two men that are within arm's length of you, are you thinking about going out the back door? Are you thinking you can even run at that point? No. And I asked [L.S.], why didn't you do that? She said, I don't know. I don't know. I wasn't thinking that. Why did you not scream? Well, who's going to hear?
>
> Also the conceptions that we have about what we would do if we were being attacked. I submit to you they're different for whether it's someone you know or whether it's a stranger jumping out of the bushes and chasing you down the street with a ski mask.

The court sustained Christensen's objection to improper argument and the prosecutor resumed her rebuttal, stating:

> [T]he victim is not running out the back door, is not screaming, is not fighting because she knows it's not going to do any good. It's also—as she testified to you, this happened very suddenly to her.
>
> . . . .
>
> The other thing that we have heard some mention of about is the warrant. She has lots of motives I think is what we heard. We hadn't heard about the warrant. There was some discussion that maybe there was a warrant out. You heard the testimony that neither she nor either one of the defendants . . . .

> [Sickels's objection "there was something mentioned that is improper rebuttal" is sustained.]
>
> When you're done looking at all the facts, there's no reasonable doubt here. There's no reasonable doubt left. All the things that they want you to believe, all the rabbit holes that they want you to go through don't hold water.
>
> In order to find the defendants not guilty, there has to be some element in you to believe what the defendants have told you in their statements and in their testimony.

After the defense lawyers objected, the parties met in chambers. The defendants argued the prosecutor had shifted the burden of proof and urged the court to grant a mistrial. The court denied their motions. Upon continuing her rebuttal, the prosecutor immediately stated: "We have the burden of proof in this case. You heard the defendants testify. You have to ask yourself about their believability." The prosecutor concluded her rebuttal without further objection and properly argued the credibility of the witnesses and reasonable doubt.

Neither defendant sought a cautionary instruction, but the issue of prosecutorial misconduct was raised again in defense motions for a new trial. The trial court denied the motions, ruling the defendants established prosecutorial misconduct, but failed to prove prejudice. On appeal, the State argues the trial court correctly determined Christensen was not prejudiced.

"Prosecutorial misconduct entitles a defendant to a new trial only when it appears to have been so prejudicial as to deprive the defendant of a fair trial." *State v. Chadwick*, 328 N.W.2d 913, 916 (Iowa 1983). We intervene on appeal "only if the trial court abuses the broad discretion which it has to determine whether prejudice results." *Id*. We view the statements of the prosecutor in the

context of the entire trial. *State v. Anderson*, 448 N.W.2d 32, 33 (Iowa 1989). Christensen has the burden to establish:

> [T]here is reasonable probability the prosecutor's misconduct prejudiced, inflamed or misled the jurors so as to prompt them to convict the defendant for reasons other than the evidence introduced at trial and the law as contained in the court's instructions.

State v. Graves, 668 N.W.2d 860, 876-77 (Iowa 2003).

Guided by the *Graves* decision, the trial court carefully analyzed the prejudice issue, including the "strength of the State's case" element of prejudice:

> Contrary to the assertions of the defendants, this is not simply a "he said, she said" case. . . . DNA was certainly not required in light of Sickels' admission that he had sexual intercourse with the victim.
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> Furthermore, [L.S.'s] testimony was corroborated by the physical evidence found by the Club manager . . . at the scene of the crime the next morning. . . . [T]he bar was in disarray and cocktail skewers and straws were spilled into the sink in the location where [L.S.] testified that she was sexually abused.
>
> More importantly, [L.S.'s] testimony was significantly corroborated by the admissions of the defendants. For example, in his trial testimony, Sickels admitted that he asked L.S. for [oral sex] for himself and Christensen after the other patrons had left the Club. Sickels even admitted the first thing that happened after L.S. said [no] was that he approached L.S. behind the bar, kissed her, [and had sexual intercourse]. While Sickels testified that L.S. reciprocated, Sickels admitted not another word was exchanged between them after L.S. said "no" to oral sex. Defendant Christensen admitted that after the sex act was completed, he said to L.S. "this never happened," or words to that effect, as he and Sickels were leaving the Club. While Christensen testified that he said this because he thought L.S. was embarrassed because he had walked in on something, Christensen's testimony corroborates [L.S.'s] testimony that these words were said.
>
> Given the physical evidence at the crime scene and the admissions of the defendants, the State's case was strong. The complainant's testimony was credible. Her statements to the DCI, her deposition testimony and her trial testimony were consistent on her central allegations of sexual abuse. The testimony of the defendants was neither consistent nor credible. Under the

> circumstances of this case, the Court doubts that the misstatements of the prosecutor on rebuttal had any serious impact on the outcome.

The court also analyzed the "severity and persuasiveness" element of prejudice:

> Nevertheless, the performance of the prosecutor in her rebuttal closing smudged an otherwise clean record in this long and difficult trial. The prosecutor repeated the offensive burden shifting statement on at least two occasions in rebuttal. But when viewed in the context of the entire trial, these isolated statements did not rise to the level of a due process violation.
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> This trial was not characterized by the pervasive lack of civility or unprofessional conduct that has warranted a new trial or a reversal of a conviction in other cases. . . . While this Court does not condone the prosecutor's conduct during her rebuttal closing, the Court does not find that this trial contained the sort of improper questioning or disparaging and belittling remarks by the prosecutors concerning the defendants that has supported a finding of prejudicial prosecutorial misconduct in our jurisprudence.
>
> This trial was conducted over the better part of eight days. There will be hundreds of pages of transcript on appeal. The prosecutors exhibited professionalism throughout the trial. They honored the presumption of innocence and assumed the burden of proof throughout voir dire, opening statement, the presentation of evidence and the opening closing argument. It was only on rebuttal that the prosecutor erred in the formulation of her argument. She prepared her rebuttal in advance and was not able to adjust after the Court sustained the first objection. But in the context of the entire trial, these missteps alone did not deprive the defendants of a fair trial. The misconduct of the prosecutor was not severe and pervasive.

(Citations omitted.)

The court concluded "the defendants failed to establish that the misconduct of the prosecutor denied them a fair trial or deprived them of due process," stating:

> This Court was a firsthand observer of the entire trial including the prosecutorial misconduct and the jury's reaction to it. The Court is firmly convinced that there is no reasonable probability

> the prosecutor's misconduct prejudiced, inflamed or misled the jurors so as to prompt them to convict the defendants for reasons other than the evidence and the law contained in the Court's jury instructions. Instead, the Court believes the jury took the prosecutor's arguments, the defendants' objections and the Court's rulings sustaining the objections in stride. The Court believes the jury returned a verdict based on the evidence and the law set forth in the Court's jury instructions.

(Citations omitted.)

We note generally, a jury is presumed to follow its instructions. *State v. Frank*, 298 N.W.2d 324, 327 (Iowa 1980). "[B]ecause the trial court is a firsthand observer of both the alleged misconduct and any jury reaction to it," we recognize "a trial court is better equipped than appellate courts can be to determine whether prejudice occurs." *Anderson*, 448 N.W.2d at 34. When we view the prosecutor's misstatements in the context of the entire trial, we are convinced the misstatements did not deprive Christensen of a fair trial and conclude he has failed to prove prejudice.

AFFIRMED.